Supreme Court, U.S.
FILED

941655 APR 10 1995

OFFICE OF THE CLERK

No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

EVANGELIN MARIE MILLER

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

EVANGELIN MARIE MILLER
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Sacramento, Ca. 95825

1-916-483-3801

Petitioner Attorney *Pro Se*

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S043344

SBC 91-0-08839

IN THE SUPREME COURT OF CALIFORNIA

FILED
SUPREME COURT
FILED
MAR I 6 1995
Robert Wandruff Clerk
P. QUINN, DEPUTY

IN RE EVANGELIN MARIE MILLER ON DISCIPLINE

Petition for writ of review, application for stay, and motion for recusal are denied.

It is ordered that Evangelin Marie Miller be suspended from the practice of law for two years, that execution of suspension be stayed, and that she be placed on probation for two years subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Regarding Stipulation filed September 29, 1994. It Is further ordered that she take and pass the California Professional Responsibility Examination within one year after the effective

date of this order. (See Segretti v. State Bar (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar and shall be added to and become part of the membership fee for the next calendar year. (Business and Professions Code section 6140.7.)

(unreadable)

Acting Chief Justice

State Statutes

THE STATE BAR ACT

California Business and Professions Code

Sec. 6001. STATE BAR; PERPETUAL SUCCESSION; SEAL; REVENUE; POWERS; LAWS APPLICABLE

The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.. . .No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with section 11000), Division 4 (commencing with section 16100), and Part 1(commencing with section 18000) and Part 2 (commencing with section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the legislature expressly so declares. (Origin: State Bar Act, sec. 2. added by Stats. 1939, ch 34. Amended by Stats. 1957, ch. 1526; Stats. 978, ch. 380; Stats. 1988, ch. 1149.)

Sec. 6079.1 STATE BAR COURT HEARING JUDGES

(a) The Supreme Court shall appoint a presiding judge of the State Bar Court and no fewer than seven hearing judges, and any additional hearing judges as may be authorized by the Legislature, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. . .

(c) The board shall screen and rate all applicants for appointment or reappointment as a State Bar Court judge, and submit its nominations to the Supreme Court, unless otherwise directed by the Supreme Court. . .

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and

expenses and provide adequate supporting staff and facilities.

Sec. 6079.5 CHIEF TRIAL COUNSEL; APPOINTMENT; TERM; QUALIFICATIONS

(a) The board shall appoint a lawyer admitted to practice in California to serve as chief trial counsel. . .

Sec. 6086.5 STATE BAR COURT; ESTABLISHMENT; POWERS; RULES

The board of governors shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of section 6007 to the extent provided by rules adopted by the board of governors pursuant to this chapter.

. .

Sec. 6086.10 PAYMENT OF COSTS OF DISCIPLINARY PROCEEDINGS

(a) Any order imposing a public reproval on a member of the State Bar shall include a direction that the member shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs.

(b) The costs required to be imposed pursuant to this section include all of the following:

(1) The actual expense incurred by the State bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

(2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These

amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceedings and in the administration of the client security fund.

. . .

(d) In the event an attorney is exonerated of all charges following a formal hearing, he or she is entitled to reimbursement from the State bar in the amount determined by the State bar to be the reasonable expenses, other than fees for attorneys or experts , of preparation for the hearing. (Added by Stats. 1986, ch. 662.)

Section 6140.7 DISCIPLINARY COSTS ADDED to MEMBERSHIP FEE

Costs assessed against a publicly reproved or suspended member shall be added to and become a part of the membership fee of the member, for the next calendar year. Costs unpaid by a member who resigns with disciplinary charges pending or by a member who is suspended of disbarred shall be paid as a condition of reinstatement of membership.

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CALIFORNIA SUPREME COURT
FILED
FEB. 24, 1995
ROBERT WANDRUFF
CLERK DEPUTY

THE SUPREME COURT OF THE STATE OF CALIFORNIA

	Docket No. S043344
In the Matter of	State Bar Court Case No. 91-0-08839-AKG
EVANGELIN MARIE MILLER	**Motion for Recusal of Members of California Supreme Court**
No. 48332 A Member of the State Bar	

Now comes the Petitioner, Evangelin Marie Miller, and respectfully moves for this Court, and its members, to recuse itself from hearing and determining whether it should sign a proposed stipulated order recommended by this Court's appointee to a party when the other party, the Petitioner, has

withdrawn her consent thereto prior to this Court's approval , due to undisclosed conflicts of interest within this Court, the prosecutor, its judges, and its State Bar Court.

Petitioner requests this Court forbear affixing its signature to such proposed stipulated order and issue a ruling first on this motion for recusal, so as to provide the Petitioner with a minimum thereafter of two weeks to request, if this Court declines to recuse itself or assign a Court of Appeals, a federal court hear and determine whether this Court's affixing its signature to such a proposed stipulation as an order offends the principles of due process of law concerning a fair and impartial adjudicator.

This motion is based on this Motion, the attached Points and Authorities, the files, and the records, and judicial notice of the State Bar Court statutes and Rules of Court.

RESPECTFULLY SUBMITTED

Dated:February 23, 1995

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THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of	Docket No. S043344 State Bar Court Case No. 91-0-08839-AKG
EVANGELIN MARIE MILLER No. 48332 A Member of the State Bar	**Points and Authorities in Support of Motion for Recusal of Members of California Supreme Court**

I.

Facts

The issue presented is whether this Court, or its members, should or may affix its signature to a proposed order

recommended by its appointee to the prosecuting party, based on a stipulation to which consent was withdrawn upon discovery by the Petitioner of a number of conflicts of interest of this Court, its appointees, the prosecutor, and the State Bar Court created by this Court with the prosecuting party.

References to "section(s)" refers to sections of the California Business and Professions Code. References to the "State Bar" refers to the State Bar of California. Petitioner incorporates by reference, as if set forth herein in full, the grounds of recusal which are set forth in her Petition appearing at pages 1-5.

II. The Risk of Bias is Intolerably High when a Court is a Partisan for a Party

When the risk of unfairness is intolerably high, a judge must be recused from a case. **Withrow v. Larkin** 421 U.S. at 58, 95 S. Ct. at 1470. While a judge is obligated to be unswayed by partisan interests, when he occupies a role as a partisan for a party and/ or on the issues presented by a party, he is disqualified to sit on a case as the risk of bias is intolerably high. California and American Bar Association Judicial Codes of Conduct, Canon

3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). A judge who is an active participant in the affairs of a party possesses a"financial interest," as defined by the California and American Bar Association Judicial Codes of Conduct, Canon 3 C(3)(c) while Canon 3C(1)(c) requires a judge to disqualify himself when "he has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."

A. Active Participation in the Affairs of the Prosecuting Party disqualifies the California Supreme Court and its members

Pursuant to **Ward v. Village of Monroeville** 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d. 267 (1972), "the court dealt with the issue of whether trial before a mayor who also had executive responsibilities for the village budget and finances was consistent with the guarantees of the due process clause when the revenue produced from the mayor's court provided a substantial portion of village funds. The court once noted that in **Tumey [v. Ohio** 273 U.S. at 532, 47 S. Ct. at 444] the fact that the mayor.... shared directly in the fees and costs did not define the limits of

the principle." 409 U.S.. at 60, 93 S. Ct. at 83. Rather the court reiterated, 'the test is whether the mayor's situation is one which 'would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clean, and true between the State and the accused....Id, quoting **Tumey v. Ohio, supra,** 273 U.S. at 532, 47 S. Ct. at 444. The court held that such 'possible temptation might exist, even in the absence of a direct, personal pecuniary interest on the part of the adjudicator, when his 'executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court.' 409 U.S. at 60, 93 S. Ct. at 83, as presented in **Matter of Ross,** 656 P. 2d. 832, 99 Nev.1 (Nev. 1983).

An executive role concerning maintaining monies coming in from guilty adjudications does not define the principle, as the Codes of Judicial Conduct recognize. Active participation in the affairs of a party is a financial interest in a party. California and American Bar Association Judicial Codes of Conduct, Canon

3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). This makes sense. A judge who actively participates in a party's affairs, in making a judgement for it, will be saving it monies or awarding it monies. In this Court's case, it awards the State Bar party monies by awarding costs to the State Bar, which are, in fact, the salaries and benefits of its appointees to the State Bar party and those of their co-employees, plus ordering probation terms which obligates the other party to pay for other programs administered by the party to which this Court has appointed employees, some of which this Court's appointees directly participate in, such as the Client Security Fund of the State Bar of California. Sections 6079.1, 6086.65, 6140.5, 6086.10(a)(b)(c).

As the Codes of Conduct emphasize, "financial interest" in a party is not limited to a judge putting money in his own pocket. It includes giving, granting, awarding judgments to a party with whom the judge actively participates, since it is assumed that every judgment carries with it a financial saving, cost, or aspect to the party in whose favor a judgment is awarded. That is not an incorrect assumption, since this Court's

orders denying all petitions of all accuseds always order monies paid to the State Bar party which include recoupment of the salaries and benefits of this Court's appointees to their privately financed State Bar employer. 3,091 attorneys have been summarily disbarred and suspended by this Court since January 1, 1989 with all orders ordering them to pay this Court's appointees' salaries and benefits as claimed "Costs," without disclosure this Court's award of "Costs" is not "costs," but the salaries and benefits of this Court's appointees to a party and their co-employees.

The United States Supreme Court in **Liljeberg v. Health Services Acquisition Corp.** 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d. 855(1988) held that a judge who was on the Board of a College, even though the College was not a party to the action, when the College was a financial beneficiary of the judgement, was disqualified under the objective reasonable person test of recusal which applies to the disqualification of both state and federal judges. See **Aetna Life Insurance Co. v. La Voie** 475 U.S. 813, 89 L.Ed. 823, 106 S. Ct. 1580 (1986). Thus, even if

a financial beneficiary of a judgment is not a party, a judge is disqualified when he has an extrajudicial relationship with a financial beneficiary of its orders. The Judicial Codes have held that an active participant in the affairs of a party is similar to a Board member or director in requiring a judge's disqualification for direct involvement with a party. California and American Bar Association Judicial Codes of Conduct, Canon 3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). **Liljeberg, supra**, makes clear that the involvement may be with a financial beneficiary of an order and is not limited to direct involvement with the parties.

Aetna, supra, makes clear that the state standard of recusal used by this Court and cited in **Lebbos v. State Bar of California** 53 Cal.3d. 37, 278 Cal. Rptr. 845, 806 P.2d. 317 (1991), footnote 1, as a rationale for its sitting on over 4,000 cases involving the State Bar, while it has appointed employees to it since 1989, has been overruled by a requirement that the California Supreme Court comply with an objective standard of recusal and not continue to use a subjective standard which permits each justice to determine his or her own bias . In **Aetna,**

supra, the United States Supreme Court made clear that a direct, personal, substantial pecuniary interest in a State Supreme Court Justice is not required for a State Supreme Court Justice to be required to recuse himself. As stated in **Aetna, supra**, at 822, "No judge `can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome." **In re: Murchison** 349 U.S. 133, 136 (1955).....what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' *Ibid.* None-the-less, a reasonable formulation of the issue is whether the `situation is one `which would offer a possible temptation to the average. judge to ... lead him not to hold the balance nice, clear and true.' **Ward v. Village of Monroeville**, supra, at 60. " "...Justice must satisfy the appearance of Justice." **Aetna, supra, p**. 825, quoting **In re: Murchison** 349 U.S. at 136.

The United States Supreme Court has stated that the process is to"examine what factors might constitute an interest in the outcome of this case that would bear on recusal. " **Aetna, supra**, p. 822. On information and belief, members of this Court

in 1988 met with officials and employees of the prosecuting party, the State Bar of California, without disclosure to any accuseds. On information and belief, members of this Court from 1988 through to the present have met with and had conversations with officials and employees of the prosecuting party, the State Bar of California, to which no accused has been privy and to which this Court has made no disclosure to any accused. Those meetings and conversations concerned a commitment by the members of this Court to aid and assist the State Bar prosecuting party in controlling and taking over attorney discipline from this Court so as to permit this Court to control its workload. No accused was ever apprised of any of these conversations, commitments, or *ex parte* collaborations by and between the members of this Court and a party. In 1988 and 1989, the members of this Court had *ex parte* communications with the State Bar party which it never disclosed to any accused. Those communications concerned requests from the prosecuting party for this Court to appoint employees to it to be "judges" to its State Bar Court to replace this Court issuing disbarment or

suspension orders on the state's attorneys. This Court, as recent publicity indicates, continues to have *ex parte* communications and conversations and meetings with the prosecuting party without any disclosure or notice to any accused. On information and belief, for over six years this Court has had *ex parte* communications with the prosecuting party concerning the merits of the constitutional issues presented by accuseds concerning the recusal of this Court and of the State Bar and its "judges" appointed by this court and concerning the unconstitutionality of the State Bar Court attorney licensing system.

As the federal court records indicate, which this Court has not disclosed to this Petitioner or any other accused, this court is a personal co-defendant with the prosecuting party in six federal lawsuits now pending concerning its removal from State Bar cases, which suits request personal monetary damages against the members of this Court for its claimed conspiracy with the State Bar private prosecuting party to disbar and suspend attorneys so as to financially benefit the employer of this Court's private appointees. Said suits plead, which is unrefuted in the

court records, that this Court has a prior involvement with the prosecuting party, has *ex parte* communications with that party, has an extrajudicial involvement with the prosecuting party in reviewing its nominees to be "Judges" to its State Bar Court and in interviewing, selecting, approving, swearing in appointees to the prosecuting party in 1989 and 1993 as well as overseeing them from 1989 through 1995, that this Court's appointees require over one million dollars a year for their private salaries as employees of the prosecuting party, and this Court has awarded its appointees' employer over fourteen million dollars in monies without disclosure to any of over 3,091 accuseds that the taking of the 3,091 attorneys' licenses would benefit the prosecuting party employer of this Court's appointees by over fourteen million dollars from the takings of accuseds' licenses to practice law. Hirsh v. Justices et. al, docket no. 94 55240, Server v. Justices et. al, docket no. 94 55250, Perry v. Justices et. al., docket no. 94 55507, Espinoza v. Justices et. al, docket no. 94 56335, Gupton v. Justices of the California Supreme Court, Eastern District Federal Court, Case no. 94-1495 GEB JM, and Grunwald v.

Justices of the United States Supreme Court, United States Supreme Court, filed February 14, 1994, docket no. pending.

Since this Court superseded the state statute permitting access to accuseds to the State Court of Appeals concerning cases concerning the State Bar party in 1990 by passing rules of court, which were recommended *ex parte* by the prosecuting to this Court and which were prohibited public comment, which rules prohibit access to any other court and reserve access to this Court alone, when it appointed employees to the State Bar prosecuting party in 1989, and, this permits this Court to review its appointees' recommendations against each accused and awards its appointees' monies from the takings of each accused's license to practice law, this act alone appears to confirm that a private conspiracy with the prosecuting party to disbar and suspend the State's attorneys to obtain monies for the employer of its appointees is a plausible explanation for the decisions of this Court for five years taking all accused's licenses to practice law. These facts raise a sufficient doubt in the mind of the average person on the street as to whether this Court could be impartial

concerning an accused's case to compel this Court's recusal for cause. Section 6082, California Rules of Court, Rules 950-962.

That this court changed, at the *ex parte* request of the State Bar and without allowing public comment, from *de novo* review of recommendations of the State Bar to no review permitted to an accused in this Court's discretion, which discretion it has exercised against over 3,091 accused attorneys since it appointed employees to the State Bar in 1989, is an additional indicia to the average person on the street that this Court is a biased adjudicator for the prosecuting party. Ca. Rules of Court, Rules 952, 954.

Appointing employees to a prosecuting party to be its Judges from a list exclusively provided by a prosecuting party is an additional indicia of bias for the prosecuting party which is unmistakable and which act was declared unconstitutional in a similar fact situation in **Wall v. American Optometric Association** 379 F. Supp. 175, affirmed 95 S. Ct. 166 (N.D. Ga. 1974), in which the United States Supreme Court denied certiorari.

Dealing with the specifics of the Petitioner's case, the State Bar in its reply has admitted it did not disclose the relevant facts about its financial interest, its State Bar Court, its judges, its money demands, its biased examinations, tests, and school, and the role of this Court for it and in providing it money from the Petitioner for this Court's appointees by this Court taking licenses. Response brief, hereinafter referred to as RB. These admissions of non-disclosure are sufficient. The State Bar admits an accused may never file to set aside a stipulation within fifteen days as provided in its rules, as the State Bar never discloses until several months later that it is demanding its' prosecutors, investigators, and co-employee judges' salaries and benefits be paid as claimed "costs," when there are no costs. The admitted non-disclosure tolls the period to object. Refer attached brief on the merits.

The Petitioner objected as soon as she had the first slight disclosure that something was not right with the representations made by the State Bar when she received a cost demand for $1,556.00 where there were absolutely no costs to the

proceeding as a Notitce to Show Cause had not even issued when the stipulation was forced upon the Petititioner by the State Bar employees informally without disclosure of the truth. Not one cent of money was spent on this proceeding, so $1,556.00 had to not be "costs" as represented in the stipulation.

Since this Court would be awarding $1,517.00 for the employer of its appointees, of which $473.00 is recoupment of the salary and benefits of its appointee to the prosecuting party for her salary and benefits in taking two minutes to put her name on a piece of paper, this Court, by sitting on this case, would be benefiting its own appointee to a party, just as it would be doing so if the monies went to the private employer of the wives or husbands of the members of this Court if it entered such an order without disclosure and waiver of its interest in the outcome.

III. The Risk of Bias is Intolerably High when a Court is a Partisan on the Issues

While a State Supreme Court Justice had on-going litigation with an insurance company, which was not a party to the judgment, the judgment involved application of a new issue concerning bad faith insurance practices, which "had the clear and

immediate effect of enhancing both the legal status and the settlement value of his own case." This compelled the United States Supreme Court to void the judgment and order of the State Supreme Court. **Aetna, supra**, p. 824. When a judge sat as a one-man Grand jury and then sat on whether he would enforce his orders by way of contempt, he was disqualified as a partisan on his own issues. He wore two hats at the same time- one partisan and one adjudicative. **In re: Murchison, supra.** This Court created a State Bar Court with a private party. It did so by appointing its judges. It occupies an executive role for a party. It appoints, reappoints, removes, and oversees its appointee Judges to a party's claimed Court. Now the issue is whether this claimed Court is non-existent as an unconstitutional court, and whether non-disclosure to the Petitioner that this claimed Court is not a Court, but a private group of employees of a prosecuting party is presented as to whether such non-disclosure warrants, among other factors, withdrawal of the Petitioner's consent to a stipulation entered by it and non-approval of a recommended order premised exclusively on such

consent and non-disclosure. Since this Court is, similar to the Board in **Gibson v. Berryhill** 411 U.S. 564, 579, 93 S. Ct. 1689, 36 L. Ed. 2d. 488 (1973), one of the Commissioners on a Board in **Yamaha Motor Corp., U.S.A. v. Riney** 21 F.3d 793 (Eighth Cir. 1994), and the entire Commission in **United Church Etc. v. Medical Center Com'n** 689 F. 2d. 693 (Seventh Cir. 1982), a partisan about the issue of a State Bar Court and the underlying issues of the Petitioner's petition, it is disqualified to hear or entertain the Petitioner's cause.

CONCLUSION

Since this court has had an opportunity to recuse itself in this situation for over five years, and has summarily denied all petitions of accuseds and, on information and belief, has refused to rule on about five hundred recusal motions [1] raising these

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[1] On information and belief, this Petitioner is informed that the following attorneys have requested recusal of this Court on the identical grounds, and this Court has summarily denied each Petition: Lebbos, supra, Attorneys Barry Ammon, Harold Rauch, John Rakus, Robert Philip McNamee, Ronald Berki, Raymond Dunn, Gary Coutin, John B. Gunn, G.G. Baumen, Kevin G. Gupton, Lucille Boston, Richard Travis, Stuart Hirsh, Harold Perry, Howard Johnson, Lawrence Bragg, Edmuno Espinoza.

identical issues presented by accuseds, since the Petitioner's case does not involve approving guilt, but this Court's duty to forbear signing a recommended stipulated order when consent was withdrawn as soon as the Petitioner had notice of the first irregularity in the State Bar's representations and it is admitted by the State Bar that the Petitioner's consent to the stipulation was obtained through its admitted fraud and/ or non-disclosure, Petitioner requests that this Court issue a ruling on its recusal first so as to permit the Petitioner access to the federal court to hear and determine whether this Court should be permitted to review whether it may sign a proposed order concerning its interests in the prosecuting party or whether by reason of conflict of interest, this Court is foreclosed from such consideration and must forbear from signing such a proposed order for its appointee to the prosecuting party.

RESPECTFULLY SUBMITTED,

Dated: February 24 ,1995

EVANGELIN MARIE MILLER
Petitioner Attorney *Pro Se*

Verification

I have read the foregoing Points and Authorities in support of Motion for Recusal of members of the California Supreme Court and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 24th day of February at San Jose, California.

_____

EVANGELINMARIEMILLER
Petitioner Attorney *Pro Se*

SUPREME COURT
FILED
JAN 27 1995
Robert Wandruff
Clerk Deputy

THE SUPREME COURT OF THE STATE OF CALIFORNIA

	) Docket No. S043344
In the Matter of	) State Bar Court Case) No. 91-0-08839AKG
EVANGELIN MARIE MILLER	**Verified Petition For Review and Application for a Stay**
	Ca. Rules of Court, Rule 952(d)
No. 48332 A Member of the State Bar	

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THE SUPREME COURT OF THE STATE OF CALIFORNIA

	) Docket No. S043344
	)
In the Matter of	) State Bar Court Case No.
	) 91-0-08839-AKG
	)
EVANGELIN MARIE MILLER	) **Verified Petition for**
	) **Review and**
	) **Application For a**
	) **Stay**
	)
	) Ca. Rules of Court,
	) Rule 952(c)
	)
No. 48332	)
A Member of the State Bar	)
_____	)

The Petitioner, EVANGELIN MARIE MILLER, a registered voter and an attorney at law, petitions for review of an order approving stipulation of the parties signed by State Bar Court Judge Alan Goldhammer, an appointee of the members of this Court. Petitioner withdrew her consent to the stipulation by filing with the State Bar Court on December 2, 1994 and with this Court on December 1, 1994, after notifying both on December 1, 1994 of the withdrawal of the Petitioner's consent to said stipulation. Exhibit A-1, A-2, A-3. The Petitioner is not

in possession of said order of Judge Goldhammer although she was advised by Diane McHenry of this Court that the transmittal it received contained such an order approving stipulation of the parties. The transmittal sent to the Petitioner by mail November 16, 1994 from the State Bar did not contain such an order. Exhibit B. The Transmittal of State Bar Court Recommendation sent to the Petitioner by mail on November 16, 1994 contained solely the two page Transmittal of Recommendation, Exhibits B-1 and B-2; Proposed Order on California Supreme Court caption approving stipulation which was unsigned, Exhibit B-3; Declaration of Service of Transmittal of Recommendation dated November 16, 1994 and Proposed Order, Exhibit B-4; Certificate of [State Bar] Costs of $1,556.00 filed January 11, 1995, Exhibit B-5; Certificate of Costs of $1,083.00 Submitted by the Office of Investigation and the Office of Trials of the State Bar of California, Exhibit B-6; Statement of Costs of $473.00 of Office of the State Bar Court of the State Bar of California, Exhibit B-7, and Declaration of Service of Certificate of Costs and Accompanying Costs filed on November 16, 1994, Exhibit B-

8. There was no order. Exhibit B-1 through Exhibit B-9.

Since the Petitioner could not file her Petition for Review of such an order in accordance with California Rules of Court Rule 952(d) within sixty days after notice of the order, since she was not provided notice of the order, Petitioner respectfully requests that her Application for Relief from Default be granted, and this Petition for Review requesting disallowance of the stipulation be granted by reason of the undisclosed conflicts of interest, including financial interest, within the signatory judge Goldhammer and his co-employee prosecutors and investigators, whereby the Petitioner, in entering into the stipulation, could not have provided and did not provide an informed consent. The chart of the 3,091 disbarments and suspensions and fourteen million dollar financial interest of the State Bar and its State Bar Court in procuring stipulated guilty dispositions is attached as Exhibit C, which information was never disclosed to the Petitioner.

A. Necessity of State Court Appellate Ruling

Pursuant to Article 3, section 3.5 of the California

Constitution, the State Bar Court of the State Bar of California admits it is constitutionally prohibited from deciding the constitutional issues presented. As stated by it *In the Matter of Res B* (Review Dept. 1991), 1 Cal. State Bar Reporter 424, "As a *sui generis* arm of the Supreme Court, the State Bar Court may recommend the Supreme Court declare a statute unconstitutional, but may only interpret existing law."

B. Important Questions of Constitutional Law

This Petition is filed pursuant to California Rules of Court, Rule 952(d) concerning review of decisions of the State Bar Court. This Petition is filed as the legal questions concern 1) whether a Petition for review is jurisdictional late when the notice of transmittal to the California Supreme Court sent to a party contains no order to be reviewed, 2) whether an order of an employee of a prosecuting party based on a stipulated disposition between the parties must not be approved by a constitutional court based on the withdrawal of consent by a party prior to approval, and 3) whether such withholding of approval is required by reason of the lack of an informed consent by a party

to the stipulation arising from lack of disclosure of a number of conflicts of interest of the judge and prosecutor approving the stipulation, including the nature and extent of his financial interest for her employer in securing it and the judge's status as an employee of the prosecuting party.

As the fiduciary in charge of its appointees to the prosecuting party, this Court has a duality of role which renders it difficult for it to sit impartially concerning non-approval of the stipulation and granting relief to the Petitioner. Ca. Rules of Court, Rule 961. The funds obtained from the Petitioner of initially the $1,556.00 demanded in the transmittal of November 16, 1994, Exhibits B-5, B-6, B-7, are available to be used by the prosecuting party to pay the salaries and benefits of this Court's appointees to the prosecuting party, including its appointee Judge Goldhammer. Further monies would be available by it permitting its appointees to find a revocation of probation and imposing additional monies to reimburse the salaries and benefits of its private appointees and to fund their law clerks, offices, research assistants, medical, dental, and retirement plans since

administrative costs to recoup reasonable expenses of investigation, hearing, and review are assessed and collected for this Court's appointees private employer for each additional proceeding. Ca. Business and Professions Code section 6086.10(b). Therefore, an important issue of law is whether, as a partisan for the prosecuting party and its State Bar Court, this Court is required to disqualify itself from passing on this Petition and, pursuant to Article 6, section 12 of the California Constitution, assign it for hearing to a State Court of Appeals.

1. A Partisan State Supreme Court and Request for Assignment to State Court of Appeals

The issue presented is whether the California Supreme Court is and has been unconstitutionally constituted since January 1, 1989 to sit on cases concerning the State Bar of California. Since this issue involves the extrajudicial and personal roles assumed by the members of this Court for a party appearing before them, and their possible personal liabilities to those harmed thereby, the Petitioner respectfully requests this Court recuse itself from deciding to review or reviewing the merits of this Petition and pursuant to the recusal criteria for State Supreme

Court Justices established by the United States Supreme Court in Aetna Life Insurance Company v. LaVoie 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1986), and pursuant to Article 6, section 12 of the California Constitution and Mosk v. Superior Court of Sacramento County 159 Cal. Rptr. 494, 601 P. 3d. 1030, 25 C.3d. 474 (1979), assign this Petition to a State Court of Appeals.

2. The Absence of Notice of the Order in the Transmittal of November 16, 1994 should extend the Jurisdictional Period to file for Review

Since the Petitioner could not file her Petition for Review of such an order in accordance with California Rules of Court Rule 952(d) within sixty days after notice of the order, since the transmittal she received with the November 16, 1994 Transmittal from the State Bar contained no order, but contained solely a transmittal of an unsigned proposed order for the California Supreme Court to sign with an indication in the two page transmittal letter that this was an original proceeding, that pursuant to section 6086.10 of the Business and Professions Code, statutorily authorized costs of this disciplinary proceeding

should be awarded to the State Bar of California, and that enclosed are the Certificate of Costs and Statement of Costs pursuant to rule 461, Rules of Procedure of the State Bar of California from ....., that the member's address is 3961 America River Drive, Sacramento, Ca. 95864, that certain information was provided to the member about rules, and that the other information to assist the Supreme Court is that this attorney has not had prior discipline imposed and that "we would like to bring to the Court's attention that Ms. Miller currently has no matters pending with the Supreme Court." Exhibits B-1- B-2. The transmittal contains no reference to an order approving any stipulation of the parties, and it does not enclose one either.

Since the transmittal sent to the Petitioner November 16, 1994 contained no order approving stipulation but just a request for the California Supreme Court to sign a proposed order, the Petitioner was not placed on notice that she had sixty days to file a Petition to prevent such a proposed order being signed, although the Petitioner took the precautionary step of writing this court asking it to withhold acting on her signature to a

stipulation, which letter was received by this Court on December 2, 1994. Exhibits A-1, A-2, Exhibit B. Since notice of the order approving stipulation was required before the sixty days could run to file a Petition for Review, this Court, or its assignee Court of Appeals' panel, should permit this filing as jurisdictionally proper, since the first notice the Petitioner received that an order approving stipulation had been signed and sent to the California Supreme Court was telephonic advice of the same on January 23, 1995 from Diane McHenry, Clerk of this Court. An order obtained without notice may be attacked at any time. Thompson v. Cook (1942) 20 Cal. 2d. 564, Nagel v. P & M Distributors Inc. (1969) 273 Cal. App. 2d. 176, 179-182, Sniadach v. Family Finance Corp. 395 U.S. 337 (1969), and Fuentes v. Shevin 407 U.S. 67 (1972).

3. Petitioner's Withdrawal of Consent prior to Approval by the State Supreme Court voids the recommended order

The Stipulation entered into between the Petitioner and the State Bar was entered into prior to the issuance of a Notice to Show Cause. Petitioner could not have known of the defects

in the State Bar Court system to which she was submitting herself by entering into such a stipulation with its employees as the principals within the State Bar failed to disclose the relevant facts to the Petitioner. The Stipulation face sheet states it is being submitted to The State Bar Court of the State Bar of California. Stip, Pg.1. It states it is being submitted for approval to the California Supreme Court following its approval by the State Bar Court, and that "The Supreme Court must enter an order effectuating the terms and conditions of this stipulation before any stipulation, actual or stayed, will be effective." Stip, p. 4, Effect of this Stipulation, item 4. These terms lead the signatory party to believe the State Bar Court is part of the constitutional courts within the State, since its transmits its proposed orders directly to the California Supreme Court for its approval. There is no disclosure that the State Bar Court is not a "Court." Article 6, sections 1, 9, Ca. Constitution. There is no disclosure that it is not publicly funded. California Business and Professions Code section 6140 et. seq. There is no disclosure that the State Bar Court is operated from funds, *inter alia*, obtained by finding

accuseds guilty. California Business and Professions Code section 6086.10. There is no disclosure the State Bar Court is a private entity created and run by the prosecuting party, the State Bar of California. There is no disclosure that it does not conform to the rules of evidence or of procedure applicable to the constitutional courts as its principal and owner, the State Bar, has exempted itself from State law under Ca. Business and Professions Code section 6001. There is no disclosure that the State Bar Court judges within this entity are the private co-employees of the prosecutors and their investigators. Ca. Business and Professions Code sections 6079.1, 6079.5, 6086.65. There is no disclosure that the two years of stayed suspension and of probation is supervised and determined, as well as its revocation by an employee of the prosecuting party who obtains money for his private employer by finding cause to revoke the probation of the signatory accused. Ca. Business and Professions Code sections 6079.1, 6079.5, 6086.5, 6086.65, 6086.10.

In a valid plea bargained disposition, all relevant facts and

consequences are required to be disclosed prior to its entry by the prosecutor and approval by a constitutional court. An accused must have "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986). This must also apply to the State Bar Court system, as it also is a rule applicable to civil proceedings. The Stipulation states, "In order to accomplish the objectives of this stipulation, the parties waive all State Bar Court procedures regarding formal discovery as well as hearing or trial." Stip, pg. 4, D. It then states, "the agreed disposition is eligible for costs to be awarded to the State Bar. (Bus. & Prof. Code s. 6086.10 and 6140.7). Respondent has been notified of his or her duty to pay costs. The amount of costs assessed by the Office of Trial Counsel will be disclosed in a separate cost certificate submitted following approval of this stipulation by a hearing judge [of the State Bar Court]. The amount of costs assessed by the State Bar Court will be disclosed in a separate cost certificate submitted upon finalization of this matter." Stip, Pg.4, item H1.

The stipulation contains no disclosure of the amount of money required to be paid. It contains no disclosure that "costs" are not statutory costs, but the salaries and benefits of the State Bar employee investigators, prosecutors, and co-employee judges within its State Bar Court. It contains no disclosure of when the monies are to be paid. It contains no disclosure of any conditions to be attached to said payments of unidentified monies. The stipulation further states,"Waiver of Right to Petition for relief from Assessed Costs," Stip, Pg. 7, that "Respondent acknowledges that this Stipulation is a compromise of disputed allegations and that a petition for relief from costs pursuant to Transitional Rules of Procedure, rule 462, alleging special circumstances or other good cause shall not be based upon the timing of this Stipulation, any aspects of the negotiation process in this case, nor the degree of discipline agreed upon by the parties hereto." It further states that, "That within one (1) year from the date on which the disciplinary order in this matter becomes effective, Respondent shall attend the State Bar Ethics School, which is held periodically at the State Bar of California...

and shall take and pass the test given at the end of such session." Stip, p. 28, Attachment to Stipulation. There is no disclosure there is a fee required for said school. There is no disclosure that the fee is $100.00, and that the sums to be paid for it are paid to the prosecuting party, or that the examination given at the end of it is prepared, graded, and approved solely by the prosecuting party.

The stipulation further provides that,"It is further recommended that the California Supreme Court order Respondent to take and pass the California Professional Responsibility Examination administered by the Committee of Bar Examiners of the State Bar of California within one year of the effective date of the order of the Supreme Court..." Stip., p.22, Further Recommendations. There is no disclosure that this examination is prepared, written, and graded by the prosecuting party. There is no disclosure the costs of said examination is $250.00. There is no disclosure those funds go to the prosecuting party. There is no disclosure the examination is a trick examination of a subjective nature requiring not a correct

answer, but the "best" answer. There is no disclosure that there is a less than a thirty percent pass rate for said examination, and that each time it is required to be taken costs the attorney an additional $350.00 payable to the prosecuting party, and that failure of such examination is grounds for revocation of probation and imposition of a two year actual suspension. There is no disclosure that the two year actual suspension may be imposed *ex parte*, without notice or hearing afforded to the Petitioner. Ca. Rules of Court, Rule 951(b). There is no disclosure that such an *ex parte* two years actual suspension may be imposed by an employee of the prosecuting party, sitting as a Judge in the State Bar Court, wherein he awards himself, his co-employee prosecutor and investigator additional monies for their salaries and benefits by revoking the stay and imposing an actual suspension. Ca. Business and Professions Code section 6086.10.

Until a few days after November 16, 1994, after the stipulation was signed and approved by the State Bar Court prior thereto, the Petitioner was never advised the State Bar Court judge was demanding he be paid $473.00 by the Petitioner for

affixing his signature to the stipulation, or that the prosecutor was demanding that he be paid $309.00 by the Petitioner for handwriting inserts into a form stipulation and signing it, and that their mutual co-employee investigator was demanding $774.00 from the Petitioner for investigating this case so as to ensure a guilty recommendation issue, when no guilt could reasonably be found on the facts, and that unless the Petitioner paid these private co-employees for their salaries and benefits of a total of $1,556.00, she would be *ex parte* suspended for two years by one of them. Exhibit B-6, B-7, B-8. It is in light of these non-disclosures of relevant conflicts of interest and financial interest of the principals, the Petitioner withdrew her consent to the stipulation on December 1, 1994. Exh. B-1. Since the basis of the recommendation is a stipulation, to which consent was revoked by a party after she learned the true facts after it was executed, this Court should not approve the recommendation, since the Petitioner withdrew consent to the stipulation prior to its approval by this Court. McDowell v. Orsini (1976) 54 Cal. App.3d. 951, 960, 127 Cal. Rptr. 285, Johnson v. Superior Court

121 Cal.3d. 115, 116, 175 C.R. 272, People v. Hill (1974) 12 C. 3d. 731, 767, 117 C.R. 393, 528 P.2d.1.

4. By Reason of the Lack of Informed Consent, the Stipulated Plea Should be Voided

There is no clause in the stipulation concerning the waiver of a constitutional right to a judicial proceeding or a disinterested judge or prosecutor. The United States Supreme Court has stated a guilty plea is more serious than a confession because it is tantamount to a conviction. Kercheval v. United States 274 U.S. 220,223, 47 S. Ct. 582, 583, 71 L. Ed. 1009 (1927). The United States Supreme Court has required that a guilty plea, like any surrender of fundamental constitutional rights, reflect the unfettered choice of the defendant. Boykin v. Alabama 395 U.S. 238, 242-244, 89 S. Ct. 1709, 1711-1713, 23 L. Ed.2d. 274 (1969). Courts have inquired as to whether the plea was made voluntarily, knowingly, and intelligently with full understanding and appreciation of the consequences. Machibroda v. United States 368 U.S. 487, 493, 182 S. Ct. 510, 513, 7 L. Ed.2d.. 473 (1962). The Courts must indulge in every reasonable presumption against waiver of constitutional rights. Evans v.

Raines 800 F. 2d. 884, 885 (Ninth Cir. 1986). Voluntariness, knowledge, and intelligent waiver means the capacity for reasoned choice among the alternatives available. Moran v. Godinez 972 F. 2d. 263 (Ninth Cir. 1992), at p. 266. "... The relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must be made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986).

The totality of the circumstances is examined to determine if a knowing and intelligent relinquishment of rights has occurred. Johnson v. Zerbst 304 U.S.458,464, 58 S. Ct.1019, 1023, 82 L.E d. 1461 (1938). The standard of voluntariness of guilty pleas was adopted by the United States Supreme Court in Brady v. United States 397 U.S. 742, 753, 90 S. Ct. 1463, 1472, 25 L. Ed. 747 (1970) from Judge Tuttle of the Fifth Circuit, as follows:

> "A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any

> commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes). 242 F. 2d. at page 115"

Misrepresentation or other impermissible conduct by state agents voids a guilty plea. Von Moltke v. Gillies 332 U.S. 708, 68 S. Ct. 316, 92 L. Ed. 309 (1948). The term "misrepresentation" means, "a false impression or account, the act of misrepresenting which is defined as "to give a false impression or account of, either deliberately or unintentionally." The New Lexicon Webster's Dictionary of the English Language, "misrepresentation" at p. 639. The State Bar and its co-employee State Bar Court Judge Goldhammer concede that they concealed that they are co-employees, that they have a financial interest for their private employer in securing the stipulation without disclosure of their relationship as co-employees and of the monies payable to their mutual employer, and that they are permitted to *ex parte* revoke probation and impose a two year actual suspension, while being partisans and financially interested

therein. These omissions strike at the core of the stipulation. The misrepresentations strike at the core of the stipulation as the Petitioner would not have entered into it had she known the" conditions" required large money payments to the State Bar, had she known the judge enforcing the stipulation and its conditions is the prosecutor's co-employee and financially interested in revoking the stayed suspension and imposing money awards for himself and his co-employee prosecutors, investigators, and judges, and his employer, and had the Petitioner been advised she would have no access to a neutral court of law by reason of the partisan role of the State Bar Court judges and the State Supreme Court for the prosecuting party. If an accused were told if he signs a paper for a guilty plea that he will not be permitted to have a neutral or a constitutional court of law review whether more punishment should be imposed for violation of its "conditions," and he will have to continue paying off the judge's private employer indefinitely and his co-employee prosecutors and investigators, no accused in his right mind would sign such a paper.

Since the waiver of constitutional rights was not knowing, intelligent, voluntary, but was based on the misrepresentation and omission of material facts by each layer involved, the stipulation must be voided as being the product of an uninformed consent. In all events, entry of the order approving stipulation must be voided for lack of disclosure by Judge Goldhammer of his relationship to the financial beneficiary of his order and the amount of financial interest therein under the reasoning of the United States Supreme Court in Liljeberg v. Health Services Acquisition Corp. (1988) 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d. 855.

5. The Court may not Enter an Award of Costs When There was no Prior Service on the Petitioner

The Stipulation which was approved by the State Bar Court judge by order approving stipulation did not contain a memorandum of costs. The Memorandum of Costs was not served until after November 16, 1994. Exhibit B. An order may not issue for costs when there was no service of a cost memorandum. Riddell v. Harrell (1886) 71 Cal. 254, 261;

Coast Electric Service, Inc. v. Jensen (1931) 111 Cal. App. 124, 388-389, c.f. Bell v. Superior Court (1906) 150 Cal. 31, 35-37. Since it was a substantial material omission of a known fact, the stipulation must be voided in its entirety for lack of consideration and of disclosure.

Petitioner incorporates by reference, as if set forth herein in full, the attached Declaration of Counsel concerning the unavailability of a transcript due to no hearing having been conducted within the State Bar Court. Ca. Rules of Court, Rule 952(e)(3).

Conclusion

By reason of the importance of determining whether a a Petition must be filed within sixty days when there is no service of an underlying order; whether a party"s consent must be permitted to be withdrawn prior to approval by a constitutional court; whether, in all events, the Petitioner's consent must be permitted to be withdrawn since it was an uninformed consent, so that this Court would be acting unconstitutionally in approving a stipulation based on an uninformed consent; and whether, by

reason of the lack of service of the Memorandum of Costs with the stipulation and order, this Court is without jurisdiction to award costs to the State Bar, Petitioner respectfully requests this Petition be referred to a Court of Appeals' panel to hear and determine these significant constitutional issues and that a Stay of proceedings within the State Bar Court and this Court issue until it has heard and determined the cause, and that this Honorable Court, in the interim, forebear from approving the proposed order.

I declare under penalty of perjury the above Petition is based on my own personal knowledge, information, and/or belief, and this verification is executed this 24th day of January, 1995 at Sacramento, California.

RESPECTFULLY SUBMITTED,

_____

EVANGELIN MARIE MILLER
Petitioner Attorney *Pro Se*

JESSIE SHIOW-JIUN HO
2255 Watt Avenue, Suite 110
Sacramento, Ca. 95825

1-916-483-3801

Petitioner Attorney *Pro Se*

THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of	)	Docket No. S043344
	)	
	)	State Bar Court Case
	)	No. 91-0-08839-AKG
	)	
EVANGELIN MARIE MILLER	)	
	)	**Declaration of Counsel**
	)	**re: Unavailability**
	)	**of Transcript**
	)	
	)	Ca. Rules of Court, Rule
	)	952(d)
No. 48332	)	
A Member of the State Bar	)	
_____	)	

No hearing was conducted within the State Bar Court at any time. No Notice to Show Cause had issued. There was no hearing concerning whether the plea or waiver of rights was voluntary, intelligent, or informed prior to approval of the stipulated plea. As a result of the foregoing, there is no transcript

of a hearing.

I declare under penalty of perjury the above Declaration of Counsel is based on my own personal knowledge, information, and belief, and this verification is executed this 25th day of January, 1995 at San Jose, California

RESPECTFULLY SUBMITTED,

_____

EVANGELIN MARIE MILLER
Petitioner Attorney *Pro Se*